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Opinion Committee

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OPINION COMMITTEE
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RQ-1101

FILE # ML-4012-98
I.D. # 40112

Re: Article 102.017 of the Texas Code of Criminal Procedure

To the Opinion Committee Chairperson:

I request an opinion construing the above-captioned statute. The fact situation giving rise to this request is as follows:

The Cooke County Courthouse houses a district court, a county court, and two justice courts. Pursuant to Section 291.003 of the Texas Local Government Code, the Cooke County Sheriff has charge and control of the courthouse and is, therefore, responsible for its security. The Sheriff is also responsible for transporting prisoners to the courthouse from the county jail for court proceedings. Deputy Sheriffs transport the prisoners, stay with them during the time they are in the courthouse, and transport them back to the county jail when they are finished with court proceedings.

Several "panic buttons" are distributed throughout the courthouse to aid the Sheriff in maintaining its security. Should courthouse personnel become aware of a volatile or dangerous situation, they can push one of the "panic buttons." A computer reads the location of the triggered "panic button" and sends a radio signal over a channel monitored by county law enforcement agencies to notify them of the situation. Any Deputy Sheriffs in the vicinity, including those assigned to transport prisoners, will respond to the radio signal which directs them to the specific office in the courthouse where help is needed.

The specific questions which arise are:

1. May resources from the Courthouse Security Fund, which is authorized under Art. 102.017 of the Code of Criminal Procedure and §291.008 of the Local Government Code, be used to purchase clip-on microphones for the portable radios of Deputy Sheriffs who regularly transport prisoners from the county jail to the courthouse and back again?
2. May resources from the Courthouse Security Fund be used to purchase clip-on microphones for the portable radios of all Deputy Sheriffs who could theoretically be called upon to respond to a panic button signal from the courthouse?

My research reveals that there are no cases or Attorney General Opinions on point. Therefore, the question presented requires an examination of the language contained in Art. 102.017 of the Code of Criminal Procedure. The pertinent language from Art. 102.017 reads as follows:

- (d) ... A fund designated by this subsection may be used only to finance the following items when used for the purpose of providing security services for buildings housing a district, county, justice, or municipal court, as appropriate:
- (1) the purchase or repair of X-ray machines and conveying systems;
 - (2) handheld metal detectors;
 - (3) walkthrough metal detectors;
 - (4) identification cards and systems;
 - (5) electronic locking and surveillance equipment;
 - (6) bailiffs, deputy sheriffs, deputy constables, or contract security personnel during times when they are providing appropriate security services;
 - (7) signage;
 - (8) confiscated weapon inventory and tracking systems;
 - (9) locks, chains, or other security hardware; or
 - (10) continuing education on security issues for court personnel and security personnel.

TEX. CRIM. PROC. CODE ANN. §102.017 (Vernon Supp. 1998).

The statute clearly omits radio and communication equipment from the list of items that may be financed by the Courthouse Security Fund. It is possible, however, that clip-on microphones for portable radios may be “security hardware” under (d)(9) of the statute. I have determined that there is no definition for the term “security hardware” in the Code of Criminal Procedure, so it will be necessary to define the term elsewhere.

Article 101.002 of the Code of Criminal Procedure states that “[t]he Code Construction Act (Article 5429b-2, Vernon’s Texas Civil Statutes) applies to the construction of each provision in this title [Title 2 of the Code of Criminal Procedure], except as otherwise expressly provided by this title.”

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TEX. CRIM. PROC. CODE ANN. §101.002 (Vernon Supp. 1998). Article 102.017 of the Code of Criminal Procedure, which contains the term "security hardware," is contained within Title 2 of the Code of Criminal Procedure, so further guidance must be sought from the Code Construction Act.

The Code Construction Act has been recodified into Chapter 311 of the Texas Government Code. See TEX. GOV'T CODE ANN. § 311.001-.032 (Vernon 1988). Article 311.011(a) of the Texas Government Code states that "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage." The term "hardware" is defined in THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (3rd ed. 1992) as "[m]achines and other physical equipment directly involved in performing an industrial, technological, or military function." Since the term "hardware" is modified by the term "security" in Art. 102.017 of the Code of Criminal Procedure, it would seem that the clip-on microphones would fall within the definition of "security hardware" because they are physical equipment directly involved in performing a courthouse security function. The microphones would enable the Deputy Sheriffs involved in transporting prisoners to communicate more efficiently with other law enforcement officers and agencies. The microphones would also allow all Deputy Sheriffs to communicate more efficiently when responding to a "panic button" transmission from the courthouse. It is my opinion, therefore, that Art. 102.017 authorizes the purchase of the clip-on microphones.

The purchase of the microphones would also help protect courthouse personnel and visitors from violent acts. Section 311.023 of the Code Construction Act reads as follows:

In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the:

- (1) object sought to be attained; ...

TEX. GOV'T CODE ANN. § 311.023 (Vernon 1988). Article 102.017 of the Code of Criminal Procedure originated as Senate Bill 243 and its companion, House Bill 882, which were introduced in response to several shootings in courthouses. The bills were designed to provide counties with the means to implement security measures to protect courthouse personnel and visitors from violent acts. Tex. Att'y Gen. LO 97-025 (1997). For the reasons stated above, the microphones would assist the Cooke County Sheriff and his deputies in protecting Cooke County Courthouse personnel and visitors from violent acts.

I look forward to receiving your opinion at your earliest opportunity. I would also appreciate any further guidance you can give me on other equipment that would be considered "security hardware" under Article 102.017 of the Code of Criminal Procedure. Thank you for your assistance.

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Sincerely,



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JMH/rlw

cc: Sheriff Mike Compton
District Judge Jerry Woodlock
County Judge Russell Duncan